

German Competition Regulator Investigates Facebook for Alleged Violation of Data Protection Laws

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The German Federal Cartel Office (the FCO) has announced that it has initiated proceedings against Facebook for the company's alleged abuse of its dominant position in a market for social networks.

The FCO appears to be taking the position that, as a firm with a possibly dominant position, Facebook has a "special obligation" to comply with German privacy and data protection laws. Facebook failed to do so, the FCO alleges, by inadequately disclosing its collection and use of subscriber data to its members.

The FCO's theory of harm is novel, as it attempts to establish a link between data protection and antitrust laws, even though until now, the European Commission has taken the view that data protection and privacy concerns are outside the scope of antitrust laws. The FCO is focused on a theory that companies like Facebook can abuse their position in a market by violating data protection laws with their collection and use of personal data. The FCO's announcement points to a possible connection between data protection and antitrust laws, asserting that "[b]y creating user profiles [Facebook] enables its advertising customers to better target their advertising activities."

If accepted, the FCO's approach may have a significant impact on U.S. firms doing business in Europe that are perceived to have a dominant position and that rely heavily on the collection of personal data as a means to monetize their services. The FCO's initiative, which it says it is undertaking in close cooperation with the European Commission and other national competition authorities, is of concern because it blurs the fundamental distinction between data protection and antitrust laws.